United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-1227

To be argued by MICHAEL J. REMINGTON

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

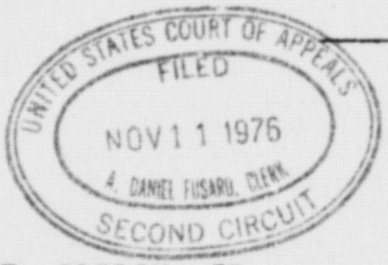
UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE

v.

CHRISTOPHER WILLIAMS,
DEFENDANT-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE



DAVID G. TRAGER,
United States Attorney,
Eastern Dsitrict of New York.

FRED F. BARLOW, JR.,
MARSHA KATZ,
Special Attorneys,
Department of Justice,
Brooklyn, New York.

GEORGE S. KOPP,
MICHAEL J. REMINGTON,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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ISSUES PRESENTED

1. Whether venue in the Eastern District of New York was proper as to Count 2 of the indictment.

2. Whether certain testimony of prior criminal activity was so inherently improper and prejudicial as to constitute plain error.

3. Whether the court's instructions to the jury were proper.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of New York, appellant was convicted on two counts of distribution and possession with intent to distribute cocaine in violation of 21 U.S.C. 841(a)(1) and 2, and on one count of conspiracy to commit the substantive offenses in violation of 21 U.S.C. 846.[1/] He was sentenced to five years' imprisonment and to a special additional parole term of five years on each count, the sentences to run concurrently.

The charges at issue arose out of a complex scheme (commencing in late 1973 and terminating in July 1974) to distribute cocaine from New York City to Washington, D.C. Defendant played an integral role in this plan. The involvement of appellant and the other participants is set forth in detail below.[2/]

1/ Appellant was originally charged on six counts in a superceding indictment. Counts 3, 4 and 5, which contained charges of possession and distribution of cocaine, were dismissed by the trial court because of lack of venue (Tr. 299-310).

2/ Leonard Durso (the supplier), William Morton, and Richard Fabella were also originally charged in the indictment. Prior to trial, all charges against these individuals were dismissed (Tr. 4).

In a separate trial which occurred prior to appellant's trial, Durso, Morton and Fabella were tried and convicted of various narcotics offenses. Additionally, Durso and Fabella were convicted of having used extortionate means to collect an extension of credit, in violation of 18 U.S.C. 894(a).

On appeal, this Court affirmed on all counts, concluding: "Our careful review of the record convinces us that all appellants were properly convicted and sentenced." United States v. Durso, et al., No. 75-1342 (decided February 9, 1976).

1. The December 25, 1973 -- January 5, 1974 Transaction.

In late 1973, Harry Haralambus was contacted by a friend, in New York City (Tr. 29), who stated that he had access to quantities of cocaine and asked if Haralambus would be interested in doing business. Haralambus responded affirmatively (Tr. 30). He then telephoned his cousin, Peter Mikedes, a resident of the Washington, D.C. area, and advised him that he had a source for cocaine (Tr. 30-31, 179).

Mikedes, in turn, contacted appellant and informed him of the availability of the cocaine (Tr. 179). Appellant expressed an interest in the cocaine and stated he would call Mikedes back later in the week (Tr. 179). Following the Christmas holiday, appellant contacted Mikedes and asked that he come to his (appellant's) apartment to make the "arrangements" (Id.). When Mikedes arrived, he was met by appellant and a friend of his, Carmen Bonita (Id.). After a brief discussion involving the cocaine, the three departed for the residence of another of appellant's friends, William "Bebe" Morton (Tr. 180). Again, the discussion centered on the cocaine purchase, and Morton was given approximately $2300.00 to take with him to New York (Tr. 264-265). Morton recalled that the money had probably been supplied by appellant (Tr. 265).

Thereafter, Mikedes, Bonita and Morton drove to New York and met Haralambus (Tr. 181, 265). The three used and tested the sample quantity of cocaine that Haralambus had obtained from his supplier (Tr. 182, 266). The quality of the cocaine proved

satisfactory (Tr. 34, 182, 266). Haralambus informed them that the price would be $3375.00 for a quarter of a pound of cocaine (Tr. 183).[3/]

Mikedes thereafter telephoned appellant, and, in code, informed him of the price and that the drugs were satisfactory.[4/] Appellant "seemed satisfied" with this information and agreed to wire an additional $1000 to a local Western Union office in Carmen Bonita's name. This was in accordance with a plan that had been arranged earlier.[5/] The money order was picked up the day, and Haralambus went to his supplier to get the cocaine (Tr. 40-42, 184). After he had obtained the quarter pound of cocaine, Haralambus rejoined the others (Tr. 185). The cocaine

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3/ The $3375.00 purchase price reflected the cost that the supplier had paid for one quarter pound of cocaine. The co-conspirators agreed that after the quarter pound was broken down and sold, the profits would be split. The supplier would get one-half the profit which he estimated at about $1700 (Tr. 35-36). The remaining one-half share of the profits were to be divided between appellant, Haralambus, Mikedes, and Morton, all of whom had agreed to use their profits to purchase more cocaine (Id.).

4/ Since Mikedes was a musician and appellant operated a night-club, the code centered around the employment of a rock group for appellant's place of business. For example, they discussed rock prices or the group's ability in order to convey the cost of the cocaine or its quality (Tr. 182).

5/ Prior to leaving Washington, D.C., it had been agreed upon that appellant would wire the remaining money necessary to complete the transaction in Bonita's name since she "had a passport and she had proper identification and it would be easier for her to cash the money order" (Tr. 183).

was tested to assure that it was of the same quality as the previously examined sample (Tr. 185). After the test proved satisfactory, Mikedes telephoned appellant to inform him of the results and advised him that the cocaine would receive "a good response down in Washington" (Tr. 185). Appellant replied that he was pleased with the way events had transpired and was waiting for Bonita and Morton to return to Washington (Id.).

The cocaine was subsequently taped to Bonita's person, since she was pregnant and it was felt that this would be a safe way to transport the narcotics to Washington (Tr. 186). When Bonita and Morton returned to the District of Columbia, they immediately went to appellant's apartment and gave him the cocaine (Tr. 270-271).

2. The January 15, 1974 -- February 15, 1974 Transaction.

Mikedes remained in New York to arrange further cocaine sales. (Tr. 186). Several days after Morton and Bonita had returned to Washington, Mikedes met with the supplier at Haralambus' apartment (Tr. 44, 186). Plans were made for the purchase of additional cocaine (Tr. 186). It was agreed that the proceeds from the sale of the narcotics would again be put into a fund for further purchases of cocaine, with the supplier taking fifty percent and the remainder to be split among appellant, Morton and Mikedes (Tr. 187). Immediately after the departure of the supplier, Mikedes telephoned appellant to determine the status of the operation (Id.). Appellant advised him that everything was running smoothly.

Within a week, however, problems arose (Tr. 188). Mikedes was threatened and physically assaulted by the supplier because the cocaine was not being sold fast enough and the supplier was impatient to receive his share of the profits (Tr. 188). Again, Mikedes immediately contacted appellant and asked him to "bring some money to help pay this commission . . . [o]therwise we were going to cease operation." (Id.). The supplier had threatened that he was not "going to provide anymore" (Tr. 188). Shortly thereafter, appellant arrived in New York provisioned with an undisclosed amount of money (Tr. 188-189). Morton also appeared in New York at this time with a quantity of pharmaceutical cocaine which he intended to sell to finance further cocaine purchases with appellant (Tr. 189, 271, 272, 274-276). Appellant gave his money to Morton and returned to Washington, D.C. (Tr. 189-190). Morton subsequently sold the pharmaceutical cocaine, but still found that they did not have sufficient funds to make a second purchase (Tr. 190, 276). Morton then contacted his wife, who flew to New York with an additional $1000 (Tr. 48, 191, 275-276). After pooling these funds, Morton was able to give Haralambus approximately $3300 with which to negotiate the second purchase (Tr. 48-49, 188-189, 272-276).

Haralambus thereafter phoned the supplier and explained that he had sufficient capital to purchase another quarter pound of cocaine. Although the supplier initially expressed reluctance due to the fact that he was still owed the profit on the first quarter pound and would now be owed the profit on the second

(Tr. 49), he agreed to the sale. Haralambus subsequently delivered the money to the supplier and actual delivery of the second purchase was made through Mikedes (Tr. 49-52, 191-192). After conducting some tests, Mikedes telephoned appellant (Tr. 192). He advised appellant that the quality of the cocaine was not as good as the first purchase and they discussed the possibility of selling some of it in New York (Tr. 192-193). This course was adopted and a little more than half the cocaine was sold in New York; the remainder was transported to Washington by Mikedes and given to appellant (Tr. 193).[6/]

3. Subsequent Transactions.[7/]

For approximately two months after the second sale, Haralambus was unable to contact Mikedes (Tr. 57). As a result, Haralambus avoided his supplier, who was still owed $3400.00 (the supplier's share of the profits on the two prior transactions).

In April 1974, the supplier met with Haralambus and informed him that he had more cocaine and could give him as much "coke"

6/ When Mikedes delivered the remaining cocaine to appellant, he (appellant) apparently gave him $1400 to wire to Haralambus (Tr. 193). The record is silent as to the purpose of these funds.

7/ These transactions formed the basis for counts 3, 4 and 5 which although proved at trial, were dismissed for lack of venue (Tr. 299-310).

as he wanted (Tr. 58). He further indicated that Haralambus could gradually repay the debts (Id.). Haralambus agreed to this plan (Tr. 58-59).

Haralambus accepted a quarter pound of cocaine, took it to Washington, D.C. (Tr. 61-62), and sold one ounce of it to a stranger who he met in a Washington bar (Tr. 63). He gave the balance of the remaining cocaine to appellant (Tr. 66-68). At this time, appellant paid all but $500 of his debt (Tr. 68).

A short time later, Haralambus received another quantity of cocaine from the supplier and took it to Washington where he again gave it to appellant (Tr. 69-70). Appellant paid for this cocaine and reimbursed the money he was short from the previous transactions (Tr. 71).

Thereafter Haralambus paid this money to the supplier and received a consignment of one-half kilogram of cocaine (Tr. 72). Haralambus telephoned appellant who stated that he would take it because cocaine was in short supply in the Washington, D.C. area (Tr. 72-73). On July 19, 1974, Haralambus flew to Washington and gave appellant the cocaine in exchange for 45-50 pounds of marihuana and $2000 cash (Tr. 73-76), and the agreement that more money would be paid in the future (Tr. 78). Haralambus sold the marihuana and paid the supplier a total of approximately $12,000.00 (Tr. 77). The supplier, however, was impatient about not receiving total payment ($17,000.00) So, Haralambus drove back down to Washington to see if appellant could complete payment for the consignment (Tr. 78). Appellant could not and never did pay Haralambus (Tr. 79).

Haralambus was caught in the middle and fearing reprisal from the supplier (Tr. 130), went to the Drug Enforcement Administration (D.E A.) office, and informed on the illegal activities of appellant, Mikedes, Morton, and the supplier (Tr. 127-129).

ARGUMENT

I

VENUE IN THE EASTERN DISTRICT OF NEW YORK WAS PROPER AS TO COUNT 2 OF THE INDICTMENT

As we have noted above, the second count charged that between January 15, 1974 and February 15, 1974, within the Eastern District of New York, appellant, together with Morton and one Durso (the supplier) distributed and possessed with intent to distribute approximately one-quarter pound of cocaine. See, App. A. 3. Appellant argues that the trial court committed plain error by failing to dismiss, sua sponte, Count 2 of the indictment for lack of venue (Br. 27-32). This claim is without substantial merit.

At the outset we note that since appellant failed to object to the alleged improper venue of Count 2 in the trial court, his present challenge should be construed as having been waived. See, Yeloushan v. United States, 339 F.2d 533 (5th Cir. 1964). Gilbert v. United States, 359 F.2d 285 (9th Cir. 1966), cert. denied, 385 U.S. 882. United States v. Stallsworth, 193 F.2d 870 (7th Cir. 1951), cert. denied, 343 U.S. 942. Indeed, the record discloses that appellant not only failed to appropriately raise the venue issue, but he affirmatively conceded that venue in this court was proper. Specifically, at the close of the government's case, appellant orally moved to dismiss Counts 3,4, and 5 of the indictment as not charging crimes committed in the Eastern District of New York (Tr. 299). In support of his motion (on which he

ultimately prevailed), appellant distinguished between Counts 1 and 2 which charged offenses that occurred in New York or that were closely tied to the New York operation and Counts 3, 4 and 5 which he claimed took place in Washington, D.C. [8/] In

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8/ The following colloquy occurred at trial (Tr. 229-307):

DEFENSE COUNSEL: " * * * it seems to me that Counts 3, 4, and 5 r fer to incidents that happened outside this District, in Washington, D.C. and I don't see how the Defendant can be charged with crimes that happened outside of this jurisdiction in Washington.

* * *

THE COURT: * * * * You challenge which Counts?

DEFENSE COUNSEL: Counts 3, 4, and 5. Your Honor. As I recall there were just two transactions in New York. And the other transactions were employed by Mr. Haralambus going to Washington and giving the drugs to Mr. Williams there, and being paid for it. I just don't see that those crimes can be seen to be committed within the Eastern District of New York. That is what I have to say with respect to those Counts.

THE COURT: * * * * Perhaps Counsel can refresh my recollection as to what they heard of his testimony.

DEFENSE COUNSEL: * * * * I would say that my recollection of Mr. Haralambus' testimony together with that of Mr. Morton, and Mr. Mikedes, would indicate that there were just two drug transactions in New York in which Mr. Williams might have been involved. All of the other transactions, whether they are the ones mentioned in Counts 3, 4, and 5, or whether these additional ones appear to be coming in out of the blue, all of those took place in Washington. I just don't recollect Mr. Haralambus referring to any third transaction that took place in New York.

* * *

My recollection of the testimony with respect to Count 1 and Count 2 is that Mr. Williams could be kept into the case on those Counts under the Western Union situation that existed.

THE COURT: The third transaction is I suppose, April 1st., is that it?

GOVERNMENT COUNSEL: Yes, Sir.

DEFENSE COUNSEL: Then we go back into 3, 4, and 5, and I think we are back in the situation involving distribution in Washington, D.C. I think my view is that there was just two transactions in New York by the subject of Counts 1 and 2. (CONT'D on next page)

these circumstances, particularly in light of appellant's concession, further review of this claim is not warranted. 9/

In any event, venue for the purpose of Count two was properly laid in the Eastern District of New York. As we have detailed above, the uncontradicted evidence showed that the negotiations, payment, transfer of the cocaine and partial distribution for the second transaction, each occurred in this district. Moreover, contrary to appellant's claim, he played a significant role in this offense. Briefly, the evidence showed that at each significant step appellant was advised or consulted as to the manner in which the deal was

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8/ (CONT'D)

But as far as the other Counts are concerned they all went down in Washington. And I don't see how the Defendant can be kept in the case for crimes that were committed in other jurisdictions.

I don't see how under any aiding and abetting theory he can be responsible for drugs that were bought. I mean, to be a real aider and abetter for drugs that were brought into the other jurisdiction that Haralambus and Bebe brought them for him. I mean, it would be stretching the aiding and abetting theory pretty far.

3, 4, and 5 to the extent that you can separate the matter, presumably would be one after Haralambus says that he had talked with Mr. Durso about operating on consignment from there on.

Transcript pages 299-313 were omitted from appellant's appendix. Since they are of relevance to the instant issue, they are included in the Government's Supplemental Appendix.

9/ Additionally, we note that even if venue was improper as to count 2, that would not affect the length of appellant's sentence since the court ordered concurrent 5 year sentences on counts 1, 2 and 6. Appellant does not contest the propriety of the venue for counts 1 and 6. Under these circumstances, there would be no need for this Court of consider the venue question even if appellant had properly raised that issue in the court below. See, Barnes v. United States, 412 U.S. 837, 848 n. 16 (1973).

transpiring. Indeed, when it appeared as if the transaction might fail for lack of funds, it was appellant who Mikedes called for financial assistance. Appellant thereafter rushed to New York and provided the capital necessary to complete the second transaction. In these circumstances, the evidence clearly showed that appellant was properly tried in the Eastern District of New York. See e.g., United States v. Cores, 356 U.S. 405, 407 (1958); United States v. Anderson, 328 U.S. 699 (1946).[10/]

II

THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN ADMITTING, WITHOUT OBJECTION, CERTAIN REFERENCES TO APPELLANT'S PRIOR DRUG DEALINGS.

Appellant, isolating three references by government witnesses to his prior narcotics involvement, contends that this testimony denied him a fair trial and requires reversal of his convictions. As we shall show, this claim is without merit.

A. During the direct examination of Mikedes, the government inquired if he had ever purchased cocaine from the appellant. Mikedes responded that he had and that it had been sometime after the Holiday Season 1972-1973 (Tr. 178). The defense failed to object to this testimony.

10/ Appellant also appears to argue that the evidence was insufficient to show that he participated in the second transaction (Br. 30-31) and that this offense was essentially a second (and separate) conspiracy (Br. 31-32). In view of the facts as set forth in this statement, this claim is without substance.

The government also introduced the testimony of "Bebe" Morton, appellant's Washington, D.C. associate. In the course of describing the manner in which he became acquainted with appellant, Morton testified that he had been introduced to appellant by Charles Lewis (Tr. 258). Morton testified that he had given Lewis some poor quality cocaine to sell; when Morton's supplier began pressing him for either the money from the sale or the return of the drugs, Morton arranged to meet with Lewis (Tr. 259). Thereupon, Lewis and appellant came to Morton's store, and defendant gave the cocaine to Lewis who in turn gave it to Morton (Id.).

At this point defense counsel objected on the general grounds that the testimony was "outside the scope of the indictment" (Tr. 259). This objection was overruled by the trial court.

Thereafter, Morton testified that his second contact with appellant occurred during late 1973. In this instance, Morton had accepted a quantity of cocaine from a friend, met with appellant and asked it he could take it (Tr. 261). Appellant responded affirmatively; however, he never paid the $3000.00 purchase price (Tr. 261-262). No objection was made to this.

B. In each instance of alleged admission of prejudicial evidence, appellant failed to properly object and preserve the issue for appellate review. Accordingly we submit that this failure to object constitutes a waiver on appeal of any ground or complaint against the evidence admitted. See United States v.

Santana, 50[illegible] F.2d 710, 716 (2d Cir. 1974), cert. denied, 419 U. S. 1053. See also, McCormick on Evidence 113 (2nd ed. 1972); 1 Wigmore on Evidence §18, at 323 (3rd ed. 1940). With respect to the second instance of allegedly improper testimony, we note that this Court requires that "an objection state accurately the ground in which inadmissibility is claimed and state this with a reasonable degree of specificity." United States v. Indiviglio, 352 F.2d 276, 279 (2d Cir. 1965), cert. denied, 383 U.S. 907. See also, 1 Wigmore, Evidence §18, at 332, 339 (3rd ed. 1940). Here, appellant's general objection to Morton's testimony as being "outside the scope of the indictment" was insufficient to inform the trial court of the objections he now seeks to raise. Under the circumstances, the claimed objectionable testimony must be "plain error" to require reversal of the convictions. Rule 52(b), Fed. R. Crim. P. Reversal for plain error requires "error both obvious and substantial." United States v. Greene, 497 F.2d 1068, 1077 (7th Cir. 1974), cert. denied, 420 U.S. 909. "[T]he determination of whether the error was obvious and affected substantial rights is to be made upon the facts of the particular case." DuPoint v. United States, 388 F.2d 39, 45 (5th Cir. 1967). Under these standards it is clear that appellant is not entitled to reversal. As we argued below, the admission of this testimony was proper. However, should this Court reject this argument, we submit that in view of the overwhelming evidence of appellant's

guilt the admission of his prior narcotics transactions was at most harmless error.

C. Even assuming arguendo that the objections below were satisfactory, admission of such evidence was not erroneous. It is generally settled that evidence of the accused's past misconduct may be introduced to establish, inter alia, that he possessed the requisite knowledge to commit an offense, to demonstrate his intent, or to show a common plan or scheme. E.g., Fed. R. Evid. 404(b); United States v. Goodwin, 470 F.2d 893, 899 (5th Cir. 1972), cert. denied, 411 U.S. 969; United States v. Cochran, 475 F.2d 1080, 1082 (8th Cir. 1973), cert. denied, 414 U.S. 833; United States v. Warren, 453 F.2d 738, 745 (2d Cir. 1972), cert. denied, 406 U.S. 944.

Accordingly, evidence of the accused's prior dealings in narcotics is admissable in the trial of a Section 841(a) charge to prove the accused's knowledge and intent on the date of the transactions charged in the indictment. E.g., United States v. Conley, 523 F.2d 650, 652-53 (8th Cir. 1975), cert. denied, 96 S. Ct. 1125; United States v. Brettholz, 485 F.2d 483, 487 (2d Cir. 1973), cert. denied, 415 U.S. 276. Here, as in Brettholz, the probative value of the testimony of appellant's prior narcotics activities plainly outweighed its prejudicial effect. See also, United States v. Drummond, 511 F.2d 1049,

1055 (2d Cir. 1975), cert. denied, 423 U.S. 844.[11/]

III

THE INSTRUCTIONS TO THE JURY WERE PROPER

Finally, appellant argues that the trial court's instructions on "accomplice testimony" and "reasonable doubt" were erroneous. As with appellant's other claimed assignments of error, he registered no objection to the court's instructions. Rather, the record discloses that appellant's counsel affirmatively approved of the charge (Tr. 313). The instant case does not present "exceptional circumstances" requiring review by this court. 3 Wright, Federal Practice and Procedure §856 (1969).

A. In its charge on accomplice testimony, the trial court instructed the jury that (Tr. 392-393):

> You may conclude that the testimony of Harry Haralambus, Peter Mikedes, Paul Rudinsky and Williams [sic] Morton, if accepted by you would make him an accomplice in the commission of one or more of crimes. An accomplice is one who joins another in the [commission] of a crime

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11/ In a related claim, appellant contends that the prosecutor's closing argument improperly highlighted his prior misconduct. While it is true that reference was made to appellant's prior criminal activities, these activities were mentioned in the context of appellant's continuous dealing in illegal cocaine traffic during the time-period in question and his knowing participation in the scheme to sell narcotics. As such, the prosecutor's closing remarks were proper. Moreover, once again, appellant interposed no objection to the summation nor did he request a curative instruction. In these circumstances, further review by this Court is not warranted.

> voluntar[ily] and with common purpose. An accomplice does not become incompetent as a witness because of his participation in the criminal acts charged. On the contrary, if the only evidence on some or all of the essential elements of any Count is the testimony of an accomplice, it may still be of sufficient weight, if you believe it, to ascertain a verdict of guilty without corroboration in or support of other evidence. Yet bear in mind that accomplice testimony is to be received with caution and weighed with care. You should not convict on unsupported accomplice testimony unless you believe that testimony beyond a reasonable doubt.

Appellant contends that the foregoing instruction did not adequate inform the jury of the danger of accomplice testimony. We disagree. The charge follows closely the standard instruction of Devitt & Blackmar, Federal Jury Practice and Instructions, §12.04 (2d ed. 1970), and is in conformity with prior decisions of this Court and other courts of appeals. See e.g. United States v. Cianchetti, 315 F.2d 584 (2d Cir. 1963); United States v. Reid, 437 F.2d 94 (10th Cir. 1971).

In sum, the charge in this case adequately apprised the jury of the problems inherent in accomplice testimony and was not erroneous. See United States v. Bermudez, 526 F.2d 89, 99 (2d Cir. 1975).

B. Appellant contends that the court below defined reasonable doubt in contradictory terms. The court's entire charge as to reasonable doubt was as follows (Tr 387):

> Proof beyond a reasonable doubt is not proof to an absolute certainty. Few things in life can be so proved. Proof beyond a reasonable doubt is such proof as you would be willing to rely and act upon in the most important of your own affairs. If, after carefully weighing all the evidence you have an abiding conviction of the truth of the

> charge such that you feel conscientiously bound to act upon it, then you would be free from reasonable doubt. If, however, after weighing all the evidence, you have such a doubt as would cause prudent men to hesitate before acting in matters of importance to themselves, such a doubt would be a reasonable doubt.

There is no contradiction of terms here. The trial judge respected the dictates of Holland v. United States, 348 U.S. 121, 140 (1954), United States v. Nuccio, 373 F.2d 168, 175 (2d Cir. 1967), cert. denied, 387 U.S. 906, and United States v. Johnson, 343 F.2d 5 (2d Cir. 1965), and concluded his instruction with the unequivocal warning that if the jury, after weighing the evidence, had "such a doubt as would cause prudent men to hesitate before acting in matters of importance to themselves, such a doubt would be reasonable doubt." (Tr. 387).

CONCLUSION

It is therefore respectfully submitted that the appellant's convictions should be affirmed.

DAVID G. TRAGER
United States Attorney,
Eastern District of New York.

FRED F. BARLOW, JR.,
MARSHA KATZ,
Special Attorneys,
Department of Justice,
Brooklyn, New York.

GEORGE S. KOPP,
MICHAEL J. REMINGTON
Attorneys,
Department of Justice,
Washington, D.C. 20530.

CERTIFICATE OF SERVICE

I, Michael J. Remington, hereby certify that two copies of the foregoing were mailed this day to Martin B. Adelman, Attorney for Appellant, 67 Wall Street, New York, New York 10005.

Michael J. Remington

MICHAEL J. REMINGTON
Trial Attorney
Criminal Division
Appellate Section
U.S. Department of Justice
Washington, D.C. 20530

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